

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (4th) 120888-U
NO. 4-12-0888
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
July 16, 2013
Carla Bender
4th District Appellate
Court, IL

ANTHONY JONES,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Livingston County
MICHAEL LEMKE,)	No. 12MR16
Defendant-Appellee.)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Steigmann and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's dismissal of plaintiff's *habeas corpus* petition, concluding plaintiff's petition was barred by *res judicata*.

¶ 2 In March 2012, plaintiff, Anthony Jones, an inmate at the Stateville Correctional Center, filed a *habeas corpus* petition. In September 2012, the trial court dismissed plaintiff's petition, finding (1) plaintiff failed to allege a cognizable claim for *habeas* relief and (2) plaintiff's complaint was frivolous and patently without merit.

¶ 3 Plaintiff appeals, arguing the trial court improperly dismissed his *habeas corpus* petition because (1) his 80-year sentence is void based on the trial court's lack of jurisdiction, (2) his due process argument was a cognizable *habeas* claim, and (3) he is entitled to immediate discharge from prison.

¶ 4 Because we conclude plaintiff's petition is barred by *res judicata*, we affirm.

¶ 5

I. BACKGROUND

¶ 6 In 1987, a jury found plaintiff guilty of the murder of his 93-year-old great-grandmother and the aggravated battery of her 61-year-old caregiver. *People v. Jones*, 321 Ill. App. 3d 515, 516, 747 N.E.2d 1074, 1075 (2001). The trial court sentenced plaintiff to an extended term of 80 years of imprisonment for the murder conviction and a concurrent five-year term for the aggravated battery conviction. *Id.* On direct appeal, the First District affirmed the trial court's judgment. *People v. Jones*, No. 1-87-1678 (Aug. 31, 1989) (unpublished order under Supreme Court Rule 23). Thereafter, plaintiff filed at least six unsuccessful petitions for postconviction relief. *People v. Jones*, 321 Ill. App. 3d at 516, 747 N.E.2d at 1075-76.

¶ 7 In April 2001, plaintiff filed a complaint for *habeas corpus* relief (735 ILCS 5/10-101 to 10-137 (West 2000)) in the circuit court of Randolph County, claiming his sentence was unconstitutional because the aggravating factors used to enhance his sentence "were never charged in the indictment, submitted to the jury, or proved beyond a reasonable doubt." The following month, the trial court granted the defendant's motion to dismiss plaintiff's *habeas* complaint pursuant to section 2-615 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-615 (West 2000)). In June 2001, plaintiff filed an amended petition for *habeas* relief, again alleging he was entitled to release because the factors used to elevate his sentence were not "charged in the indictment, submitted to the jury, or proved beyond a reasonable doubt." Later that month, the court dismissed plaintiff's amended petition with prejudice.

¶ 8 In March 2012, plaintiff, who was then imprisoned at the Pontiac Correctional facility, filed a complaint for *habeas corpus* relief, naming Randy S. Pfister, the warden of Pontiac, as defendant. (While this appeal was pending, Michael Lemke, the warden of Stateville

Correctional Center, became the custodian of Jones and is, therefore, the proper party in this action.) Plaintiff's complaint alleged the charging instrument never put plaintiff on notice of the court's intention to sentence him to an extended-term sentence, thereby violating plaintiff's sixth amendment "right to notice and due process of law." Plaintiff alleged *Cole v. Arkansas*, 333 U.S. 196 (1948), controlled his case. In addition, plaintiff claimed the maximum sentence to which he could have been "legally sentenced" was 40 years; therefore, because he had "been continuously incarcerated" since September 22, 1986, and qualified for day-for-day good-time credit, plaintiff was entitled to immediate release on September 22, 2007. Plaintiff also alleged as a second claim that he was entitled to immediate release from disciplinary segregation because the adjustment committee refused to call plaintiff's requested witnesses to prove plaintiff did not disobey a direct order.

¶ 9 In May 2012, defendant filed a motion to dismiss and impose sanctions. Specifically, defendant argued the trial court should dismiss plaintiff's complaint pursuant to sections 2-615 and 2-619 of the Civil Code (735 ILCS 5/2-615, 2-619 (West 2012)), because plaintiff's petition failed to assert either (1) the trial court lacked jurisdiction or (2) a postconviction occurrence entitled plaintiff to immediate release. Further, defendant alleged plaintiff's claim relating to his extended-term sentence was barred by *res judicata* because plaintiff raised the same claim in two previous *habeas corpus* complaints, both of which the trial court found meritless. Finally, defendant requested the trial court enter a finding that plaintiff's complaint was frivolous and impose sanctions pursuant to section 22-105 of the Civil Code (735 ILCS 5/22-105 (West 2012)).

¶ 10 In June 2012, the trial court granted defendant's motion to dismiss, finding

plaintiff's complaint failed to state a cognizable *habeas* claim because plaintiff did not allege either the trial court lacked jurisdiction or an occurrence subsequent to plaintiff's conviction entitled plaintiff to immediate release. The court noted a *habeas corpus* petition was not the proper mechanism for plaintiff to raise his contention concerning the constitutionality of the statute underlying his sentence. The court also found plaintiff's complaint was "frivolous and patently without merit" and, because plaintiff knew the complaint lacked any arguable basis in law or fact, the court assessed court costs against plaintiff.

¶ 11 In September 2012, plaintiff filed a notice of appeal. During the pendency of this appeal, plaintiff also filed a motion to cite additional authority, *People v. Kennebrew*, 2013 IL 113998. We take plaintiff's motion with the case and hereby grant it.

¶ 12 II. ANALYSIS

¶ 13 On appeal, plaintiff argues the trial court improperly dismissed his *habeas corpus* petition because (1) his 80-year sentence is void based on the trial court's lack of jurisdiction, (2) his due process argument was a cognizable *habeas* claim, and (3) he is entitled to immediate discharge from prison.

¶ 14 A motion to dismiss pursuant to section 2-615 of the Civil Code challenges the legal sufficiency of a complaint based on defects apparent on the complaint's face. *Bell v. Hutsell*, 2011 IL 110724, ¶ 9, 955 N.E.2d 1099. In ruling on such a motion, a court must accept as true all well-pleaded facts in the complaint and all reasonable inferences that may be drawn from those facts. *Bonhomme v. St. James*, 2012 IL 112393, ¶ 34, 970 N.E.2d 1. "The critical inquiry is whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted." *Id.*

We review an order granting a section 2-615 motion *de novo*. *Bell*, 2011 IL 110724, ¶ 9, 955 N.E.2d 1099. On appeal, we may affirm the trial court's judgment on any basis contained in the record. *Beacham v. Walker*, 231 Ill. 2d 51, 61, 896 N.E.2d 327, 333 (2008).

¶ 15 The *habeas corpus* statute "provides relief only on the grounds specifically enumerated in section 10-124 of the act." *People v. Gosier*, 205 Ill. 2d 198, 205, 792 N.E.2d 1266, 1270 (2001). Thus, *habeas corpus* relief is available only where (1) the trial court lacked jurisdiction or (2) a postconviction event has occurred that entitles the prisoner to release. *Beacham v. Walker*, 231 Ill. 2d at 58, 896 N.E.2d at 332. A *habeas* complaint "may not be used to review proceedings that do not exhibit one of these defects, even though the alleged error involves a denial of constitutional rights." *Id.*

¶ 16 Here, plaintiff's *habeas* complaint alleged the trial court violated his due process rights because the charging instrument did not put plaintiff on notice the court intended to sentence him to an extended-term sentence. Defendant argues the trial court properly dismissed plaintiff's complaint because it was barred by *res judicata*. We agree.

¶ 17 "The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause of action." *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467, 889 N.E.2d 210, 213 (2008) (quoting *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334, 665 N.E.2d 1199, 1204 (1996)). For *res judicata* to apply, three elements must be satisfied: (1) a final judgment on the merits rendered by a court of competent jurisdiction; (2) an identity of cause of action; and (3) identical parties or their privies in both actions. *Id.*

¶ 18 In this case, plaintiff filed a June 2001 amended petition for writ of *habeas corpus*

in which he claimed his sentence was unconstitutional because the aggravating factors used to enhance his sentence were not charged in the indictment, submitted to the jury, and proved beyond a reasonable doubt. Later that month, the circuit court of Randolph County dismissed plaintiff's amended petition with prejudice. Accordingly, *res judicata* bars plaintiff's claim in this case, as a final judgment on the merits has been rendered on the same claim plaintiff raises in the present petition for *habeas corpus*.

¶ 19 Plaintiff's additional authority, *Kennebrew*, 2013 IL 113998, does not alter our decision. In *Kennebrew*, the appellate court entered judgment against the defendant on an uncharged lesser-included offense. In reviewing that decision, the Illinois Supreme Court held the charging instrument approach applies when the appellate court convicts a defendant of an uncharged offense not considered by the trier of fact and the defendant had sufficient notice of the uncharged offense. *Id.* at ¶ 53. *Kennebrew* does not govern defendant's case, in which the trial court sentenced defendant to an extended term based on statutory aggravating factors.

¶ 20

III. CONCLUSION

¶ 21 For the reasons stated, we affirm the trial court's judgment.

¶ 22 Affirmed.